

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD,)
RICARDO GONZALES, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS)
LOCAL 38 HEALTH AND WELFARE FUND,)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS LOCAL 295-295C WELFARE)
FUND, AND STEAMFITTERS FUND LOCAL)
439, on Behalf of Themselves and)
All Others Similarly Situated,)
)
Plaintiffs,)
)
vs.) Case No.
)
WALGREEN CO.,)
)
Defendant.)
)
-----)

VIDEO-RECORDED REMOTE DEPOSITION OF
LYNETTE HILTON, Ph.D.
Tuesday, January 17, 2023
Volume I

*** CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER ***
Reported by:
CARLA SOARES
CSR No. 5908
Job No. 5645367
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1 Q Did you -- and they did so at your 18:14:36
2 instruction, correct?

3 A Yes.

4 Q Did you review the query before it was
5 produced to us? 18:14:38

6 A No. It's not my practice to review the
7 code.

8 Q So do you understand that this code
9 relates to finding a PSC price?

10 A No, other than I see it's reading in PSC 18:14:41
11 data.

12 Q So the queries that you produced to us or
13 that we received from counsel, you've never reviewed
14 those before?

15 MR. ALEXANDER: Objection to form. 18:14:45

16 THE WITNESS: I wouldn't say I've never
17 reviewed them. I've looked briefly at some code.

18 The rest, I asked my staff explain to me
19 what this code is doing. They'll walk me through
20 it. Or we just talk about it in words rather 18:14:49
21 than -- I don't look at the code.

22 BY MR. LEIB:

23 Q Do you have any experience with code
24 yourself?

25 A I do, but it's very old. 18:14:52

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1 And if the co-insurance was 25 percent, the TPP 18:27:09
2 would pay the PBM \$75, and the consumer would pay
3 Walgreens \$25; is that correct?

4 A That's my understanding, yes.

5 Q Is there a field that you look at to 18:27:13
6 determine whether an individual consumer had
7 co-payment versus co-insurance?

8 A I used the -- I calculated it myself.

9 So I looked at the consumer portion
10 divided by the total amount paid by the consumer and 18:27:16
11 the TPP for a given PBM in a given month.

12 And if 90 percent of those transactions
13 were the same percentage, then I assumed that it was
14 a co-insurance situation. Otherwise, it was a
15 co-payment situation. 18:27:23

16 Q So that's the number you used, 90 percent.
17 If 90 percent of the time it was the same
18 percentage, then you decided it was co-insurance?

19 A Yes. It's my understanding that there are
20 some variables in Walgreens' data that potentially 18:27:28
21 have information on that, and also that the PBMs
22 would have information on that.

23 But this is the way that I did it with
24 what -- the data that I have currently.

25 Q What data were you looking at to determine 18:27:32

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1 that?

18:27:33

2 A To determine what? Sorry.

3 Q Whether 90 percent had a certain
4 percentage.

5 A So I was looking at -- for the PBM data
6 merged onto the Walgreens data.

18:27:36

7 If the consumer payment from the Walgreens
8 data, the TPP payment from the PBM data, the sum of
9 those becomes the denominator, the consumer payment
10 is the numerator, and if that percentage is greater
11 than -- if I see that percentage is greater than
12 90 percent of the transactions for a given month for
13 a given PBM, then I assume that it's a co-pay --
14 excuse me -- co-insurance situation.

18:27:41

15 Q And if it was 89 percent of the time, you
16 would figure it was co-pay?

18:27:48

17 A Yes. That's the current methodology.

18 Q What are you looking at -- what are we
19 getting as the sum total that we're trying to find a
20 denominator for? How do we determine that
21 denominator? What are we looking at? Is it for an
22 individual?

18:27:52

23 So Bob Smith, we're looking at all Bob
24 Smith's transactions in a month?

25 A No. This is a transaction-by-transaction

18:27:57

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1 analysis.

18:27:58

2 Q Well, I thought you said to determine if
3 it's a co-insurance, you looked at a whole month.

4 A So for a given transaction, I would
5 calculate the consumer portion as a percentage of
6 the total amount paid, which is given by the TPP
7 payment plus the consumer payment. So that's on a
8 transaction-by-transaction -- I first do that.

18:28:01

9 Q Okay.

10 A Then for a given month, I look at all of
11 those transactions and determine whether most of the
12 transactions have that same 25 percent, for example.

18:28:06

13 Q What do you mean by "those transactions"?

14 A So first I start with the PBM
15 transactions, and I look at each transaction,
16 calculate the percentage that the consumer paid for
17 each transaction.

18:28:11

18 So do you have that in your mind?

19 Q That one I've got. The individual I've
20 got.

18:28:15

21 A Okay. Okay. So then, for every month,
22 let's say for month one, there are ten transactions.

23 Q Ten transactions for -- ten transactions
24 for --

25 MR. ALEXANDER: Please --

18:28:19

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1 MR. LEIB: I understand.

18:28:20

2 Q Ten transactions for Bob Smith? Is that
3 what you're saying?

4 MR. ALEXANDER: Counsel, I would just ask,
5 please let the witness complete her answer in full
6 before asking the next question, even if it's to
7 clarify what she is testifying to.

18:28:22

8 BY MR. LEIB:

9 Q No, it's not just for Bob Smith.

10 So what are all the transactions that
11 you're looking at to decide if Bob Smith has a
12 co-pay or co-insurance?

18:28:25

13 A So I'm looking at -- again, this is the
14 PBM-produced data for the fund plaintiffs.

15 So I'm looking at, for a given PBM, for a
16 given month, all of the transactions in that month.
17 So these were the fund plaintiffs, right, for a
18 given PBM.

18:28:30

19 Q Well, you first said, "For a given PBM for
20 a given month." And then you said, "So these were
21 the fund plaintiffs," right?

18:28:35

22 So, look. Steamfitters -- which did have
23 co-insurance -- Steamfitters had a specific plan.
24 That plan provided that they had co-insurance.

25 Are you only looking at Steamfitters

18:28:40

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1 beneficiaries in that month, or are you looking at 18:28:41
2 all CastiaRx transactions in that month?

3 MR. ALEXANDER: Objection to form.

4 THE WITNESS: So I'm doing it by PBM. So
5 to answer your question, if I looked at -- I would 18:28:45
6 look at Castia transactions for month one for all
7 of -- all of the transactions in that month, and
8 determine if the majority, or more than the -- you
9 know, 90 percent, were the same percentage,
10 25 percent, 35 percent, whatever it is, then I would 18:28:50
11 identify that as a co-insurance situation.

12 That works with the data that I have here.
13 If I'm given more PBM data, my assumption is that
14 the PBM -- we would ask the PBM to turn over that
15 information that would allow me to identify whether 18:28:56
16 there was a co-insurance or co-pay situation.

17 BY MR. LEIB:

18 Q Before we get to if the PBM turns over
19 more data, you understand that CastiaRx administers
20 thousands of plans, right? 18:29:00

21 A I don't know that. It wouldn't surprise
22 me.

23 Q It would surprise you or wouldn't?

24 A Would not.

25 Q What about Express Scripts? You know 18:29:04

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[illegible]

3 Q Okay. So then you're only looking at one
4 plan. What's your methodology if there's more than
5 one plan? 18:29:29

6 A So like I said earlier, I believe that the
7 PBMs would be able to give that information. And I
8 also believe there are variables in Walgreens' data
9 that indicate co-insurance. But that's not
10 something I looked at at this point. I did -- I 18:29:34
11 used the methodology that I just described for the
12 data that I have.

13 Q We looked at -- first of all, what

14 fields -- what fields are you talking about?

15 MR. ALEXANDER: Objection to form. 18:29:38

16 BY MR. LEIB:

17 Q In the PBM data, what fields are you
18 talking about?

19 A I don't have a particular field name in
20 the PBM data. That would be something that we would 18:29:41
21 ask them to produce.

22 Q Well, do you know if they have data that
23 would differentiate between -- I'm sorry -- if they
24 have fields that would differentiate between co-pay
25 and co-insurance? 18:29:45

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1 in paragraph 7 of my report, states that "I was 18:41:57
2 asked to develop a formulaic methodology that can
3 identify and calculate overpayments by plaintiffs
4 and class members as a result of Walgreens' failure
5 to report or otherwise include PSC prices when 18:42:01
6 determining the U&C price to report for PSC
7 generics."

8 And then there's a second part to that
9 involving the unjust enrichment.

10 And then I state in my report, "I have 18:42:06
11 developed and present below illustrative
12 calculations." I state that in paragraph 9.

13 BY MR. LEIB:

14 Q Why only illustrative?

15 Let me ask you a different question. 18:42:10

16 You have all the data you need to figure
17 out all of the alleged overpayments for the
18 individual named consumer plaintiffs, correct?

19 A No.

20 Q According to your methodology, you need 18:42:13
21 Walgreens' data, correct?

22 A Yes.

23 Q You need the PSC transactional claims
24 data, correct?

25 A Yes. 18:42:16

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1 Q You need the ESI formularies, correct? 18:42:17

2 A Yes.

3 Q You need the Connecticut reconciliation
4 data, correct?

5 A Yes. 18:42:19

6 Q And those four pieces of information, you
7 have complete sets of those, correct?

8 A No.

9 Q You only have it up to 2019, correct?

10 A That's correct. 18:42:23

11 Q Did you figure out all individual consumer
12 plaintiff alleged overpayments up through 2019 -- up
13 until -- I'm sorry -- through 2019?

14 MR. ALEXANDER: Objection to form.

15 THE WITNESS: Sorry. I'm just rereading 18:42:28
16 the question.

17 Did I figure out all -- no. No. That
18 wasn't something I was asked to do. I was just
19 asked to develop a methodology, and I was showing
20 that the methodology worked by providing an 18:42:32
21 illustrative example.

22 BY MR. LEIB:

23 Q So it looks like you provided at least one
24 example for every state that the person might be a
25 class representative of; is that correct? 18:42:36

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1 A I believe that was the intent.

18:42:36

2 Q That was the instruction from counsel,
3 correct?

4 A Yes.

5 Q And you believe you have more transactions
6 than these, in which there are overpayments up until
7 and through 2019, that you've identified?

18:42:39

8 MR. ALEXANDER: Objection to form.

9 THE WITNESS: Yes, I believe that to be
10 the case.

18:42:42

11 BY MR. LEIB:

12 Q And you don't know whether it was for
13 Ms. Bullard, Mr. Gonzales, or Ms. Russo?

14 A Sitting here today, I don't know. I
15 obviously have that information. I just don't have
16 it memorized.

18:42:46

17 Q Did you provide that information, all of
18 the alleged overpayments that you know with regard
19 to the individual named consumer plaintiffs, to
20 counsel?

18:42:50

21 A I believe I did.

22 Q And who decided which examples would go in
23 your report, you or counsel?

24 A I believe there was back-and-forth on
25 that.

18:42:54

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1 Q Who ultimately made the decision?

18:42:54

2 A I believe based on the data that I would
3 have (inaudible).

4 THE REPORTER: I'm sorry. I didn't hear
5 you. "Based on the data that I would have..."?

18:42:56

6 THE WITNESS: I would have determined
7 which ones were the best examples of the
8 methodology.

9 BY MR. LEIB:

10 Q What makes something a good example or a
11 best example? Because those are the two words you
12 used.

18:42:57

13 A I would say the data are populated, you
14 know, in the Walgreens data less -- for lack of a
15 better word -- messy, cleaner data, more populated
16 data, that sort of thing.

18:43:02

17 Q What is messy data?

18 A Messy data, they are data that -- some of
19 these data are hand-entered, and so there might be a
20 typo. For example, the NDCs had leading zeros where
21 normally they wouldn't have leading zeroes. Those
22 sorts of things.

18:43:07

23 It's very common in data of this sort, and
24 it's a common thing to have to go through and
25 standardize those things.

18:43:12

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [x] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: January 23, 2023

23 Carla Soares

24
25 CARLA SOARES

CSR No. 5908